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 AUBURN LAKE TRAILS PROPERTY OWNERS ASSOCIATION

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:	)	Case No.: 12-29353-B-11
	)	Adv. No.: 13-02132-B
DANIEL MAJOR EDSTROM,)	
	)	Docket Control No. ATL-2
Debtor and Debtor in Possession.	)	Chapter 11
	)	Assigned to: Hon. Thomas C. Holman,
	)	U. S. Bankruptcy Judge
DANIEL MAJOR EDSTROM,)	
	)	DEFENDANT ASSOCIATION'S REPLY
Plaintiff,	)	TO PLAINTIFF'S OPPOSITION TO
vs.	)	ASSOCIATION'S MOTION TO
	)	DISMISS PLAINTIFF'S
AUBURN LAKE TRAILS PROPERTY	)	FIRSTAMENDED COMPLAINT
OWNERS ASSOCIATION, a California)	
non-profit mutual benefit corporation,)	
et al.,)	Date: October 29, 2013
)	Time: 9:32 a.m.
Defendants.)	Ctrm: 32, 6 th Floor
)	Dept: B
)	

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1 Defendant AUBURN LAKE TRAILS PROPERTY OWNERS ASSOCIATION ("Association" or
2 "Defendant") hereby replies to Plaintiff's Opposition to Association's Motion to Dismiss Plaintiff's First
3 Amended Complaint For Failure to State a Claim as follows:

4 1. Dismissal of Plaintiff's first amended complaint is appropriate because Plaintiff's
5 opposition is just as confusing and rambling as the first amended complaint; and

6 2. Plaintiff is incapable of pleading new facts that would overcome the deficiencies of the
7 first amended complaint and thus, leave to amend should be denied.

8
9 **POINTS AND AUTHORITIES**

10 **1. Dismissal of Plaintiff's first amended complaint is appropriate because Plaintiff's**
11 **opposition is just as confusing and rambling as the first amended complaint.**

12 Dismissal is appropriate when the operative pleading is patently verbose, confusing, and
13 rambling. *Desardounin v. UPS, Inc.* (D. Conn. 2003) 285 F. Supp. 2d 153, 157. The fact that Plaintiff
14 needs 17 pages of arguments to explain whether or not Plaintiff's first amended complaint has met the
15 minimal pleading requirements proves how confusing Plaintiff's first amended complaint is. The fact
16 that Plaintiff needs to cite 32 irrelevant case laws and 38 different sections of various statutes, rules,
17 and/or regulations to explain the hidden meanings buried under various causes of action alleged in
18 Plaintiff's first amended complaint proves how confusing Plaintiff's first amended complaint is.

19
20 Plaintiff's opposition papers consists of circular and repeated arguments already contained in the
21 first amended complaint and adds more confusion by referencing all kinds of irrelevant case laws,
22 statutes, rules, and/or regulations hoping that one of them will somehow make sense eventually. For
23 example, at page 6 of Plaintiff's opposition, Plaintiff states that "Federal Bankruptcy Rule 7001(1) is
24 used to recover money or property, of which Plaintiff seeking to recover" and repeats 7001(2) –
25 7001(8) the same way by repeatedly adding the phrase "of which Plaintiff is seeking to" A
26 plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegations,' and
27

1 expect his complaint to survive a motion to dismiss.” *Ashcroft v. Iqbal* (2009) 129 S. Ct. 1937, 1954.

2 Plaintiff’s opposition is a desperate attempt to create something out of nothing. On or about May
3 23, 2012, ALT received notice of Plaintiff’s bankruptcy petition. On June 12, 2012, ALT wrote a letter
4 to Plaintiff to inform him that all proceedings against Plaintiff and his property would be suspended. No
5 actions were taken thereafter and ALT filed no lien against the bankruptcy estate.

6 Plaintiff argues at page 16, lines 14-18, that ALT should be punished for its “conduct” and the
7 punishment would be to equitably subordinate ALT’s claims. Plaintiff, again, fails to explain which
8 specific conduct of ALT is subject to subordination. Plaintiff fails to explain which claim of ALT is
9 being sought to be subject to the equitable subordination punishment. It is unclear which of the 32 case
10 laws and 38 statutes, regulations, and/or rules referenced by Plaintiff actually or purports to support
11 Plaintiff’s equitable subordination theory. Plaintiff’s opposition papers are just as confusing as
12 Plaintiff’s first amended complaint and they both contain nothing more than rambling arguments trying
13 to create something out of nothing.
14

15 It is also impossible to understand how various Penal Code sections, B&P Code sections, and CA
16 Govt. Code sections play any role in this case. Plaintiff’s first amended complaint contains rambling
17 arguments and non-viable causes of action in order to pass the pleading stage. It is impossible for
18 Plaintiff to respond to rambling arguments buried under 32 irrelevant case laws and 38 different sections
19 of various statutes, rules, and/or regulations.
20
21

22
23 **2. Plaintiff is abusing the bankruptcy process to avoid his responsibility for the post-petition obligations.**

24 There is no doubt that Plaintiff is abusing the bankruptcy process to avoid his responsibility for
25 the post-petition association dues. Most, if not all, of the homeowners associations have CC&Rs
26 and/or collection policies governing the associations’ operations and budget. The very existence of
27

1 the CC&Rs in it of itself is not a "lien" in the context of this adversary proceeding. If that is so, any
2 and all associations with recorded CC&Rs would automatically be in violation of the automatic stay
3 whenever one or more of its members file a bankruptcy petition even if the associations took no
4 action.

5 In this case, no lien exists to collect the pre-bankruptcy delinquent dues. Plaintiff, however,
6 continues to argue that ALT has a lien to collect the pre-petition debts by virtue of having a set of
7 recorded CC&Rs when the association was created in 1990. Plaintiff's unreasonable argument is
8 indicative of his desperate attempt to avoid his responsibilities for the post-petition association dues.
9

10 Plaintiff did not allege any post-petition act in violation of the automatic stay. Plaintiff is
11 simply raising a temporary restricted access argument in order to draw an unwarranted deduction of
12 fact or unreasonable inference of some kind of violation. "Conclusory allegations of law and
13 unwarranted inferences are not sufficient to defeat a motion to dismiss." *Interstate Natural Gas Co.*
14 *v. Southern California Gas Co.* (9th Cir. 1953) 209 F.2d 380, 384.
15

16 CONCLUSION

17 None of the 32 cases and/or 38 different sections of various statutes, rules, and/or regulations
18 referenced in Plaintiff's opposition support Plaintiff's rambling arguments. Plaintiff is incapable of
19 pleading new facts that would overcome the deficiencies of the first amended complaint. Thus, leave
20 to amend should be denied.
21

22 Respectfully Submitted.

23 Dated: October 22, 2013

24 ANGIUS & TERRY, LLP

25 By: /s/ Sam Y. Chon
26 SAM Y. CHON

27 Attorneys for Defendant Auburn Lake Trails
28 Property Owners Association

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO

IN RE DANIEL MAJOR EDSTROM

Debtor,

DANIEL MAJOR EDSTROM

Plaintiff,

v.

AUBURN LAKE TRAILS PROPERTY
OWNERS ASSOCIATION, a California non-
profit mutual benefit corporation; et al.

Defendants.

Case No.: 12-29353-B-11
Adv. Proc. No.: 13-02132-B

Docket Control No. ATL-1

Chapter 11

CERTIFICATE OF SERVICE

Hearing date: October 29, 2013
Time: 9:32 a.m.
Courtroom: 32, 6th Floor
Department: B

Hon. Thomas C. Holman

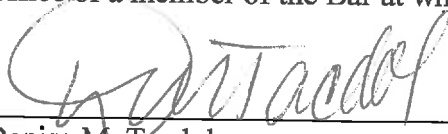
I, Denise M. Tacdol, declare that:

I am employed in the County of Placer, State of California, I am over the age of 18 and am not a party to the within action; my business address is 3001 Lava Ridge Court, Ste. 130, Roseville, CA 95661.

On July 16, 2013, I served the within:

DEFENDANT ASSOCIATION'S REPLY TO PLAINTIFF'S OPPOSITION TO
ASSOCIATION'S MOTION TTO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

- 1 ☒ (By E-Mail) through the Court's ECF Program;
- 2 ☒ (By Mail – Federal) I placed such envelope with postage thereon fully prepaid in the
3 United States mail at Roseville, CA.
- 4 ☒ (By Mail – State) I am readily familiar with the practice for the collection and processing
5 of correspondence for mailing with the United States Postal Service; it is deposited with
6 the United States Postal Service on the same date in the ordinary course of business at the
7 business address show above; I am aware that on motion of the party served, service is
8 presumed invalid if the postal cancellation date or postage meter dates is more than one
9 day after the date of deposit for mailed contained in this declaration.
- 10 ☒ Executed on October 22, 2013, at Roseville, California.
- 11 ☒ (State) I declare under the penalty of perjury under the laws of the State of California that
12 the foregoing is true and correct.
- 13 ☒ (Federal) I declare that I am employed in the office of a member of the Bar at whose
14 direction this service was made.


Denise M. Tacdol

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